IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 850 of 1994

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BROACH TEXTILE MILLS LIMITED

Versus

JASHWANT NARSINHBHAI

Appearance:

1. Special Civil Application No. 850 of 1994

MR SHITAL PATEL FOR MR AJ PATEL for Petitioner No. 1

MR ZA SHAIKH for Respondent No. 1

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 06/10/2004

ORAL JUDGEMENT

1. The petitioner, an employer challenges the order dated 3rd January, 1994 made by the Commissioner under

the Workmen's Compensation Act, 1923, (hereinafter referred to as "the Act of 1923") and Labour Court, Bharuch below application exhibit-11 in Workmen's Compensation (Agree) Case No. 13 of 1992.

2. On 10th August, 1992 the respondent workman met with an accident. Considering its liability the petitioner - employer deposited a sum of Rs.65,539-50 before the Commissioner under protest under sub section (2) of section 4-A of the Act of 1923. Pending the said proceeding the workman received compensation in the sum of Rs.85,000-00 in Motor Accident Claim Petition No. 550 of 1992 made before the Motor Accident Claims Tribunal, Bharuch. In view of section 167 of the Motor Vehicles Act, 1988, the workman being not entitled to compensation both under the Motor Vehicles Act, 1988 and under the Act of 1923 the petitioner moved Application exhibit-11 for withdrawal of the aforesaid sum of Rs.65,539-50. The said application was contested by the workman. The Commissioner was of the opinion that section 167 of the Act of 1988 would be attracted in case where the workman makes the claim. In the present case the petitioner having deposited the amount of compensation under sub section (2) of section 4-A of the Act on its own volition, section 167 of the Act of 1988 would not be attracted. Accordingly by impugned order the Application exhibit-11 was rejected. Feeling aggrieved the petitioner has preferred the present petition.

3. Pending this petition by interim order made on 20th January, 1994 (Coram: S.M. Soni, J) the further proceedings of the aforesaid compensation case No. 13 of 1992 was stayed. The above referred sum ofRs.65,539-50 deposited by the petitioner was ordered to be invested in long term deposit with any nationalised bank for a period of three years. Learned advocate Mr. Patel states that the said deposit has been renewed time and again.

4. In above view of the matter, the impugned order, being interlocutory in nature, does not warrant interference in a petition under Article 227 of the Constitution of India. However, the aforesaid deposit made pursuant to the interim order dated 20th January, 1994 may be continued till the final disposal of the case.

5. The petition is allowed to the extent the sum of Rs.65,539-50 invested in the nationalised bank shall remain invested in the bank till the final disposal of the Workmen's Compensation (Agree) Case No. 13 of 1992. Impugned order made below Application exhibit-11 shall

stand modified accordingly. Rule is made absolute in above terms. Interim relief stands vacated. There shall be no order as to cost. The parties shall be at liberty to move the Commissioner for early hearing and disposal of the case.

This order is made without prejudice to the contentions raised in the present petition.

Dt: 6-10-2004 (MS. R.M. DOSHIT, J)

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